

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,

**Plaintiff,**

V.

JUSTIN LASYONE

**Defendant.**

Case No. CR07-5284RBL  
Case No. C07-5438RBL

## ORDER

THIS MATTER is before the Court on Defendant's Motion pursuant to 28 U.S.C. §2255. The record reflects that defendant filed the instant motion on August 15, 2007 and filed a Notice of Appeal of his Judgment and Commitment on August 20, 2007. Absent extraordinary circumstances not present here, this Court should not consider a collateral attack on a judgment while a direct appeal is pending. *See Feldman v. Henman*, 815 F.2d 1318, 1320 (9<sup>th</sup> Cir. 1987), cert. denied, 503 U.S. 975 (1992); *United States v. Pirro*, 104 F.3d 297, 299 (9<sup>th</sup> Cir. 1997). Therefore, the Motion pursuant to 28 U.S.C. §2255 is **DISMISSED WITHOUT PREJUDICE**. The defendant may re-file the motion, if necessary, after the conclusion of his direct appeal.

## **IT IS SO ORDERED.**

The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing pro se.

Dated this 27<sup>th</sup> day of August, 2007.

Ronald B. Leighton  
RONALD B. LEIGHTON  
UNITED STATES DISTRICT JUDGE